

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.26877 of 2015

Date of Decision:18.09.2017

Jai Narain and another Petitioners
vs.

State of Haryana and others Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Ms. Munisha Gandhi, Sr. Advocate with
 Ms. Salina Chalana, Advocate for the petitioners.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Harkesh Manuja, Advocate for respondents
No.4 to 10.

Rakesh Kumar Jain (Oral)

The petitioners are aggrieved against the order of the Superintending Canal Officer dated 17.03.2015 and the order of the Chief Canal Officer dated 09.10.2015 by which the order dated 11.12.2014 passed by Divisional Canal Officer has been set aside.

In brief, the petitioners are the owners in possession of land situated in the revenue estate of Village Bhaupur Tehsil Israna District Panipat. The land of the petitioners is at a short distance to the land of the respondents which is also depicted in the site plan (Annexure P.1). As per the colour provided in the site plan, blue colour is given to the water course, land of the petitioners is shown in yellow colour, land of the respondents in orange colour and path (raasta) is in pink colour. The grievance of the petitioners is that there is a consolidation path shown in black colour which otherwise has been given pink colour and that the respondents want to carve out a watercourse at points A and B for the purpose of irrigating their land shown in orange colour though it is a path provided during consolidation

and the respondents have the water course available at Points C and D. The Divisional Canal Officer sanctioned the scheme of watercourse 'CD' on compensation basis on the southern side Killa No.25/21/1 at the the cost of the beneficiaries on the ground that the length of water course on the nothern side of Killa No.28/5 (A-B) is 40 karam whereas length of water course 'CD' on the southern side of Killa No.25/21/1 is only 15 karam and the respondents can properly irrigate their land through watercourse 'CD' and there is no difference of their field level. The Appellate Court reversed the finding of the Divisional Canal Officer with the following observations:-

- “1. The holding of Sh. Karam Chand and others requesting for canal water is five killa away from point E on main branch of water course through E – B – A whereas their holding is 11 Killa away from E through E – C – D as per divisional Canal Officer, Panipat decision.
2. The spot level of holding of the appellants are such that country slope is towards the drain and as such irrigation from Kernot Killa is possible only if canal water is given from point A towards D.

Since the existing temporary watercourse is on alignment E – B – A is through shortest distance from outlet and also feeds the area of applicant, through gravity flow from higher to lower level, this alignment is most feasible for better irrigation as such this court modifies their DCO decision and sanction one can wait watercourse A – B on the Northern line of Killa No.28/5 on compensation basis to the appellant through the land of Sh. Jai Narain and others, further this Court also directs

the appellants Sh. Karam Chand and others to construct culvert of proper design under the supervision of irrigation Department at their own cost for crossing and carrying the crops from field to local path for Sh. Jai Narain and others. This court modify the DCO decision as above.”

The Chief Canal Officer, approved the order of the Superintending Canal Officer passed in appeal with the following decision:-

“Revenue missal, khaka plan and other relevant record produced in the court were examined. Statement of appellants/ respondents were also considered. From the khaka plan it is seen that there is a lengthy katcha watercourse from the head of outlet approximately in the length of 27 Killas (5400') which further runs on the zigzag alignment along the village boundary. Therefore the fields of respondents will not be irrigated effectively through this alignment. Moreover the smallholding of Sh. Hukam Chand son of Sh. Fatta etc. will be bifurcated if the watercourse “CD” is allowed. Further by allowing the watercourse on the alignment of “CD” will also involve a drainage crossing as shown in the khaka plan which will not be so technically suitable/ operable.

On the other side of the watercourse “AB” proposed and marked on the khaka plan will directly advocate the fields of respondents as it is five killa (1000') away from the main water course and it is on the shortest possible alignment and connected with the lined water course. It will thus irrigate the fields of the respondents in a better way. The spot level of

holding of the respondents are such that country slope is towards the drain and as such irrigation from Killa to Killa is possible only if Canal water is given from point “A” towards “D”. Keeping in view of the above the watercourse “AB” on the northern side of Killa No.28/5 on compensation basis is hereby sanctioned under the Canal Act. Decision of Superintending Canal Officer/ YMS Circle, Karnal dated 17/03/2015 is hereby upheld.”

Counsel for the petitioners has reiterated that once the respondents have the facility of irrigation from Point C to D, the water-course from points A and B should not have been provided. On the other hand, counsel for the respondents has submitted that various reasons have been given by the Appellate Authorities which are already reproduced hereinabove.

Counsel for the respondents has referred to various reasons given by the Appellate Authorities in their favour.

I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that the reasons given by the Appellate Authorities are more cogent and, therefore, the decision of the Divisional Canal Officer has rightly been reversed. Consequently, no interference is called for in this petition and the same is thus hereby dismissed.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No